

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
 )  
Policy and Rules Concerning the )  
Interstate, Interexchange Marketplace )  
 )  
Implementation of Section 254(g) of the )  
Communications Act of 1934, as amended )

CC Docket No. 96-61

REPLY TO THE OPPOSITION

Recent comments filed in opposition to the petitions for reconsideration of the above-captioned, Docket No. 96-61, impel ECONOBILL Corporation to set forth a reply. The following is an effort to buttress the stand taken by ECONOBILL Corporation in its earlier letter to the FCC, dated December 2, 1997, plus additional comments concerning the above-captioned proposal, resulting, hopefully, in its abandonment or revision.

## INTRODUCTION AND SUMMARY

Our remarks are grouped in two sections. First, **IN RESPONSE TO ARGUMENTS OF THE OPPOSITION**, we have utilized information submitted by the other petitioners to reply to the two written oppositions submitted to the FCC, "Opposition to Petitions for Further Reconsideration," by the Ad Hoc Telecommunications Users Committee, *et al.*, and "Opposition of Sprint Corporation," by Sprint Corporation, both dated January 7, 1998. Hereafter the term "the Opposition" will be used to refer to either or both of the above.

With respect to our position the Opposition offers four points of contention. We have worded their arguments as questions, followed by our answers, which will be elaborated in the text that follows.

A. Without accountability to a government agency can competitive forces guarantee fair rates? No. Their deals are concealed in a cloud of complexity.

B. Does public disclosure invite tacit price coordination among interexchange carriers? No. Interexchange carriers can coordinate prices without public disclosure.

C. Does the filed tariff doctrine give interexchange carriers a license to give the consumer misleading or fraudulent information? Question does not relate to public disclosure requirement.

D. Can the public make use of the published tariffs? Yes. While we agree with the call for improvement, we note that the public is benefitting through those who use tariffs on their behalf.

In the second section, **FURTHER COMMENTS ON FCC 97-293**, we have presented quotations from the Federal Communications Commission text of proposed amendment to section 254(g) of the Communications Act (FCC 97-293), Part III **INFORMATION DISCLOSURE ISSUES**, followed by our remarks.

To summarize our comments: Under the present system competition among nondominant interexchange carriers functions well—possibly better than without public disclosure. Public disclosure of filed tariffs assures the public access to information they would otherwise lack and provides them redress in case of disagreement with the carrier. We urge the Federal Communications Commission not to eliminate the public disclosure requirement but, on the contrary, to expand and improve it.

## I. IN RESPONSE TO ARGUMENTS OF THE OPPOSITION

A. Without accountability to a government agency can competitive forces guarantee fair rates?

The Opposition calls the FCC public disclosure requirement, “. . . an anomaly in the commercial world. There is no government-mandated disclosure of prices for other commercial goods and services.”<sup>1</sup>

Telecommunications is a utility, not a consumer item. (Let us use the more appropriate term “subscriber” rather than “consumer” or “customer” in referring to those who pay for the telephone utility.) In its Petition the Utility Reform Network relates how instituting price disclosure has been under consideration by the electric utility in New England.<sup>2</sup>

In contrast to other utilities, however, the telecommunications industry is uncommonly complex. It is far more complex than all the other utilities—gas, electric, water, etc.—combined. In its “Comments” MCI refers to this complexity, saying, “. . . products are introduced and changed rapidly and involve many millions of customers.”<sup>3</sup> The carrier states further that changing from tariffs to individually negotiated contracts will cost the company an estimated \$100 million per year, and that cost will invariably be

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<sup>1</sup>Opposition to Petitions for Further Reconsideration, by Ad Hoc Telecommunications Users Committee, *et al.* (January 7, 1998) p. 3.

<sup>2</sup>Petition for Further Reconsideration, by The Utility Reform Network, *et al.* (December 4, 1997) p. 6: See discussion of public utility commissioners of six New England states to develop public disclosure of comparative pricing of retail sale of electricity, March 1997.

<sup>3</sup>Comments, by MCI Telecommunications Corporation, (January 7, 1998), p.3.

passed on to the consumer.<sup>4</sup>

The Opposition declares that the public disclosure requirement should not be retained just because, "some customers may be unprepared to go the trouble of securing competing proposals."<sup>5</sup>

The research findings of Kimberly Sierk of Salestar<sup>6</sup> and Geoffrey T. Mordock of the Telecommunications Research and Action Center<sup>7</sup> show how calling the carrier for information about rates and services can, indeed, be "trouble" to the subscriber. (See footnotes.) We can recount innumerable, similar incidents from our own experience. Only last week, in a conversation with a carrier about a cellular phone promotion we were told by one representative that the promotion had expired. A second "rep" said, no, her database showed that the promotion had been extended another week. This and other like episodes invariably ended the same way: we looked in the tariffs for clarification.

Contradictions have become commonplace because of inadequate training of

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<sup>4</sup>*Ibid.*

<sup>5</sup>Opposition to Petitions for Further Reconsideration, by the Ad Hoc Telecommunications Users Committee, *et al.* (January 7, 1998), p. 3.

<sup>6</sup>Petition for Further Reconsideration, by the Utility Reform Network and Telecommunication Management Information Systems Coalition (December 4, 1997), Exhibit C. A summary of the findings of a team of telecommunications analysts:

1. The caller had to make multiple phone calls for one request.
2. The carrier demanded specific information from the caller before allowing the inquiry to proceed.
3. The caller was given conflicting information.
4. Carrier would not comply with the request to furnish information in writing.
5. Information provided was scanty, either because the telephone representative did not know, or because the information was considered to be proprietary.
6. When pressed for specifics the carrier advised the caller to look it up in the tariffs!

<sup>7</sup>Petition for Further Reconsideration by Telecommunications Research and Action Center and Consumer Action and Consumer Federation of America (December 4, 1997), Attachment B, "Declaration of Geoffrey T. Mordock," citing specific instances of carriers' giving conflicting information and withholding information.

telephone representatives and failure or incompatibility in their databases. Apparently, the telecommunications bureaucracy has become so complex, it confounds its own employees<sup>8</sup>, to say nothing of its subscribers.

An example of complexity for the subscriber: One of our clients, a businessman whose domestic long distance telephone usage averages 50,000 minutes per month, had signed a contract to pay over 16¢ per minute for his blended domestic long distance calling. "Blended" means a combination of interstate, intrastate and intralata usage; inbound and outbound usage; day, evening and nighttime calling; and dedicated and switched usage. He was, as the tariff filings revealed, eligible for a rate of less than 9¢ per minute with the same carrier.

How is it that the subscriber had signed a contract to pay almost double for his domestic long distance rate? He was "duped" because of the complexity of the determination of the rate, and because he was not in contact with similarly-situated subscribers, who might be scattered across the country. Thanks to public access to the tariff files we were able to view better service plans enjoyed by similarly-situated subscribers and were able to convert his existing contract to a recently filed contract tariff with the same carrier.

It must be understood that a service contract with a telephone company does not entail only rates, an area which is itself mind-boggling in its multiplicity. A service contract is a compilation of terms, equipment, services, features and, possibly, promotions, each of

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<sup>8</sup>*Op cit.*, "Declaration of Geoffrey T. Mordock": "I found that the rates and services being offered by all of the companies to be so complicated that even their own personnel were not able to assure the accuracy of the information they provided and that often the information was incorrect.

which has an overwhelmingly vast potential for customization in accordance with the vast variety of subscribers' situations. Our experience clearly shows that without recourse to tariff filings subscribers would miss many promotions and services to which they are entitled. As Mr. Mordock testifies,

It was difficult . . . to get information on all the plans that were in fact available from each carrier. Instead, they attempted to limit information only to those plans they wanted to promote at the time, even though less expensive plans were available to customers. . . . Often, I found that the IXC representatives will hesitate or be unable to disclose information about rates and plans that could only be obtained via files at the FCC.<sup>9</sup>

Referring to the above quotation the Opposition says it is "illogical".<sup>10</sup> It does not say that it is not true.

**B. Does public disclosure invite tacit price coordination among interexchange carriers?**

We commend the Opposition on its skillful argument demonstrating that AT&T rate increases are not commensurate with inflation.<sup>11</sup> The Opposition goes on to state that other carriers are raising their rates in tandem with AT&T. What the Opposition fails to make clear, however, is whether eliminating the public disclosure requirement will deter tacit price collusion, if it exists.

Is it not puzzling that those who oppose mandated public disclosure, arguing that

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<sup>9</sup>*Op cit.*, "Declaration of Geoffrey T. Mordock."

<sup>10</sup>Opposition of Sprint Corporation, by Sprint Corporation, (January 7, 1998), p.3.

<sup>11</sup>*Op cit.*, Opposition, by Ad Hoc Committee, *et al.*, p.4. A parenthetical comment: the way we see it, AT&T Tariffs #8067 and #8099, mentioned by the Opposition in their footnote, are good evidence in support of our suggestion to create tariffs with built-in restrictions to rate increases instead of detariffing.

information of competitive telephone rates is readily available to subscribers, are at the same time claiming that without public disclosure the interexchange carriers will not know the competitive rates? Our own observation is corroborated by the Utility Reform Network, *et al.*, who state, if the telephone companies have to stop looking in the tariffs to discover the rates of their competitors, they will not be deterred in the least.<sup>12</sup> Even the smallest interexchange carrier has more interest, funding, and inventiveness to learn its competitors' rates than the vast majority of subscribers. For example, the carrier has the means to hire a team of research analysts to review billing patterns of their competitors' subscribers. Considering the carrier's superior resources, the elimination of the public disclosure requirement would not hurt the carriers, only the subscribers.

**C. Does the filed tariff doctrine give interexchange carriers a license to give the consumer misleading or fraudulent information?**

It is difficult to assess the merits of the Opposition's affirmative because there was not enough information supplied in their text for us to properly understand it. However, as the Opposition itself states, "The problem has nothing to do with public rate disclosure."<sup>13</sup> Since our objective is to keep public disclosure, we have no call to discuss this issue in this presentation.

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<sup>12</sup>*Op cit.*, Petition, by the Utility Reform Network, *et al.* (December 4, 1997), pp. 15-18.

<sup>13</sup>*Op cit.*, Opposition, by the Ad Hoc Committee, *et al.*, pp. 5-6.



**D. Can the public make use of the published tariffs?**

The Opposition contends that since contract tariffs are not written in "plain English", the subscriber is unable to make use of them. We heartily agree to their suggestion to use simple language in the wording of telephone contracts.

However, whether or not the people can understand the wording of a tariff, or, whether or not they even know there is such a thing as a tariff, the American people favor public disclosure. A Salestar survey clearly indicates that the people are interested in preserving public accessibility of tariff information.<sup>14</sup> At the present time the public disclosure requirement is functioning effectively, through consumer advocacy organizations like the Telecommunications Research and Action Center (TRAC), which assist residential subscribers, and through telecommunications consulting firms such as ours, which serve the business sector.

Thus, while the tariff filing process is less than ideal in its present form, this does not mean that it is not of significant usefulness to many subscribers. Rather than looking to abolish the requirement to publicize filed tariffs, the current format could be improved by making tariffs more readily available, using less arcane language, and possibly, by requiring that some carrier invoices state where these tariffs can be viewed by the subscriber. There is no question that many more subscribers would take advantage of lower priced tariff offerings if adequate information were more readily available.

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<sup>14</sup>Caravan Phone Rate Information Disclosure, prepared for Salestar by Opinion Research Corporation International (November 28, 1997).

## II. FURTHER COMMENTS ON FCC 97-293.

Below are quotations from the proposed amendment to section 254(g) of the Communications Act (FCC 97-293), Part III "Information Disclosure Issues," with our ensuing remarks.

A. *Section 61, pp. 34-35:* "Ad Hoc Users Committee requests that the Commission eliminate the public disclosure requirement with respect to information on individually-negotiated service arrangements."

Individually-negotiated service arrangements, i.e., contract tariffs, represent most of the dollars spent by the business sector on long distance service because subscribers do not opt for the basic tariffs with their standard posted discounts. Once a subscriber is locked into a custom contract tariff, he/she should have the opportunity to view other tariffs on file with the option of switching to one that offers a more competitive rate. A large sector of the market will suffer if public disclosure is not available.

B. *Section 62, p. 35:* "... a public disclosure requirement for customer-specific arrangements will inhibit competition ..."

Since divestiture AT&T has lost approximately 50% of its interstate business to competing nondominant interexchange carriers. This is extremely significant in light of the fact that there is a certain percentage of the market which will not leave AT&T since they have the most advanced, sophisticated, and reliable network. Evidently, competition already works very well with the existing public disclosure requirement.

Although it might sound paradoxical, we predict that in the event of the elimination of the public disclosure requirement the competition among nondominant interexchange carriers will suffer. Large carriers like AT&T, Sprint, and MCI have built up a reputation with

the American public, and thus, they have a potential advantage over smaller, lesser known carriers. Without the presence of an objective tariff the people are less likely to question a large carrier that states its prices are the best ones available.

C. *Section 63, p. 36*: “. . . Rural Telephone Coalition (RTC) asks the Commission to require carriers to make information more widely available to consumers to ensure that they have easy access to the information necessary to determine whether nondominant interexchange carriers are complying with the rate integration and rate averaging requirements of section 254(g).”

We agree with the request of the Rural Telephone Coalition.

D. *Section 68, p. 38*: “The Commission, however, requires carriers to ensure that individually-negotiated service offerings are available to similarly-situated customers, regardless of their geographic location.”

We would like the Commission to clearly state how it could enforce this requirement.

E. *Section 68, p. 38*: “Specifically, if a nondominant interexchange carrier could profit from selling an interstate, domestic, interexchange service at one price to one customer and attempted to sell the same service at an unjustly or unreasonably discriminatory price to a similarly-situated customer, that customer would purchase services from other facilities-based nondominant interexchange carriers that could profit from selling the same services to that customer at the lower market price.”

Aside from our comments above (pp. 5-7) there is another difficulty, namely, that competitive market forces cannot be relied upon to promote the best interests of a subscribing business that has already signed a service contract with a specific carrier. Making custom contract tariffs public knowledge allows a subscriber under a carrier's contract to migrate to a better deal, one that was designed for a similarly-situated subscriber.

F. *Section 70, pp. 39-40*: “We believe that our decision to eliminate the public disclosure requirement . . . will not deprive . . . customers of information . . . that they

need to ensure that they have been correctly billed and to bring to the Commission's attention possible violations of the Communications Act, particularly section 254(g)."

A significant concern is the question, in the absence of tariff filings, how can a subscriber who believes he/she is being billed incorrectly by the carrier question this issue? With a filed tariff for public reference there can be little dispute if an overcharge exists. Absent the tariffs, the carrier would be called upon to dredge up from its database one from hundreds of millions of individually negotiated private contracts, and, as we already experience in the present system, the subscriber is not being accommodated in this respect. Would the subscriber have to resort to the courts for relief?

G. *Section 68, p. 58*: "Moreover, we can remedy any carrier conduct that violates the requirement that carriers make individually-negotiated service arrangements available to all similarly-situated customers through the section 208 complaint process . . ."

Few subscribers would resort to the complaint process because it is exhausting and lengthy. Furthermore, it requires supportive documentation, which, ironically, is best found in the tariffs. Under the present system in the event that the subscriber feels violated by discriminatory treatment by the carrier the tariff is his/her instant defender.

H. *Section 71, p. 40*: " . . . we are prepared to revisit this issue in the event that evidence shows that the safeguards we have implemented are inadequate."

As mentioned above, the Salestar survey revealed that 85% of the people want public disclosure<sup>15</sup>. Why doesn't the Commission conduct its own survey of public opinion (both the residential and business sectors) before eliminating the public disclosure requirement?

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<sup>15</sup>Caravan Phone Rate Information Disclosure, prepared for Salestar by Opinion Research Corporation International (November 28, 1997).

In conclusion, we believe that the public disclosure requirement offers significant protection to subscribers, and this requirement implies a comfort level that there is a “watchdog agency” to keep the carriers honest.

## CERTIFICATE OF SERVICE

I, Nissan Rosenthal, do hereby certify that the foregoing **REPLY TO THE OPPOSITION**, concerning CC Docket No. 96-61 was sent by Federal Express, on the 19<sup>th</sup> day of January, 1998 to the attention of Ms. Magalie Roman Salas, for following list of parties:



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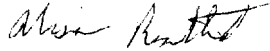
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